

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA  
3

4 UNITED STATES OF AMERICA, ) Case No. 08MJ1348-NLS  
5 Plaintiff, ) San Diego, California  
6 vs. ) Thursday,  
7 DANIEL CRUZ-ESCOBAR, ) May 15, 2008  
8 Defendant. ) 9:30 a.m.  
9 )

10 TRANSCRIPT OF PRELIMINARY HEARING  
11 BEFORE THE HONORABLE NITA L. STORMES  
12 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: CHARLOTTE KAISER, ESQ.  
14 Assistant United States  
15 Attorney  
880 Front Street  
San Diego, California 92101

16 For the Defendant: FEDERAL DEFENDERS OF SAN  
17 DIEGO, BY: TODD W. BURNS, ESQ.  
18 225 Broadway, Suite 900  
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19 Transcript Ordered by: TODD W. BURNS, ESQ.  
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24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

1 SAN DIEGO, CALIFORNIA THURSDAY, MAY 15, 2008 9:30 A.M.

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3 (Call to order of the Court.)

4 THE COURT: Ms. Kaiser, are you familiar with  
5 number five on the calendar, Daniel Cruz-Escobar?

6 MS. KAISER: Your Honor, I partially spoke with  
7 the AUSA on the matter. My understanding is that he would  
8 be requesting a continuance as there seems to be some  
9 confusion as to whether this was supposed to be a time  
10 waiver or waiver of indictment.

11 THE COURT: Are you prepared to stand in for him  
12 on that matter?

13 MS. KAISER: If your Honor wishes me to do so.

14 THE COURT: It's not whether I wish. It's whether  
15 you're prepared to do it.

16 MS. KAISER: Yes, your Honor.

17 THE COURT: All right. Call number five please.

18 THE CLERK: Calling matter number five off  
19 calendar, case number 08MJ1348-NLS United States versus  
20 Daniel Cruz-Escobar also on calendar for a preliminary  
21 hearing.

22 MR. BURNS: Good morning, your Honor. Todd Burns  
23 Public Defender on behalf of Mr. Cruz.

24 THE COURT: Good morning. All right. This matter  
25 was on for a preliminary hearing today albeit I was advised

1 prior to court that this individual was going to --

2 UNIDENTIFIED SPEAKER: I'm sorry which --

3 THE COURT: Number five, Mr. Cruz-Escobar. The  
4 Court was advised that this individual was going to waive  
5 indictment this morning and plead to an information. Is  
6 that correct, counsel?

7 MS. KAISER: No, your Honor. My understanding is  
8 the government's position is that it was supposed to be a  
9 time waiver. That is what was represented to the  
10 government. That is the government's understanding.

11 MR. BURNS: Your Honor, I don't know how there  
12 could have been miscommunication on this matter. I made it  
13 quite clear to Mr. Jones that I wanted this case to proceed  
14 quickly because there were some circumstances by which I  
15 wanted to get in front of a district judge and if we were  
16 going to enter into an agreement, ask for immediate  
17 sentencing which the government did agree that whatever  
18 offer was made by the government that they would not oppose  
19 and would agree to request for immediate sentencing.

20 I made it clear that I also wanted to not waive  
21 time today and extend things a couple of weeks given the  
22 same circumstances. I made it clear that he would waive  
23 indictment today to keep open the options of potentially  
24 working out a deal to save the government time from getting  
25 the indictment. I actually asked Mr. Jones even though

1 there wasn't a plea agreement to send me the waiver of  
2 indictment and the information, which he did. I had my  
3 client sign the waiver of indictment, was prepared to waive  
4 indictment today.

5 I don't know how Mr. Jones is confused but now  
6 he's come in here and I said look, "I've got a waiver of  
7 indictment. Waive indictment, get information, keep the  
8 options open, decide where we're going from here." He said  
9 he doesn't want to do that. He wants to go get an  
10 indictment. That's Mr. Jones' choice. In having made this  
11 choice and this being the 10th day from the initial  
12 appearance and apparently not being ready for preliminary  
13 hearing I move to dismiss.

14 THE COURT: Well, the Court is not going to  
15 dismiss this case in the absence of Mr. Jones. It appears  
16 to be that there was, in fact, a miscommunication of  
17 counsel. Today is Thursday the 15th. I'm going to continue  
18 this matter to my calendar for preliminary hearing on next  
19 Tuesday, which will be the 20th, and I find that  
20 extraordinary circumstances exist and justice requires the  
21 delay based on a miscommunication of counsel as to whether  
22 this individual was going to waive indictment and plead to  
23 an information or waive time. That will be the basis of my  
24 ruling and this matter will be set on my calendar next  
25 Tuesday morning at 9:30.

1 MR. BURNS: I note Mr. Cruz's objection, your  
2 Honor.

3 THE COURT: So noted.

4 (Proceedings concluded.)  
5

6 I certify that the foregoing is a correct  
7 transcript from the electronic sound recording of the  
8 proceedings in the above-entitled matter.

9 s/Leslie Kychik 5/28/08  
10 Transcriber Date

11 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

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13 L.L. Francisco, President  
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